

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

<p>HASAN MALIK DAVIS,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>WASHOE COUNTY SHERIFF'S OFFICE, et al.,</p> <p style="text-align: right;">Defendants.</p>	<p>Case No. 3:22-cv-00350-ART-CSD</p> <p style="text-align: center;">ORDER DISMISSING AND CLOSING CASE</p>
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*Pro se* Plaintiff Hasan Davis brings this civil-rights action under 42 U.S.C. § 1983 to redress First Amendment violations that he claims to have suffered while he was housed at Washoe County Detention Facility (“WCDF”). (ECF No. 1-1). On September 13, 2022, the Court screened Davis’s Complaint, dismissing his claim with leave to amend by October 13, 2022. (ECF No. 8). The Court warned Davis this action could be dismissed if he failed to timely file an amended complaint. (*Id.* at 9). That deadline expired but Davis did not file an amended complaint, move for an extension, or otherwise respond to the Court’s screening order.

However, Davis updated his address with the Court shortly after the screening order, and it appeared that Davis was no longer incarcerated. So the Court considered alternatives to dismissal and entered a second order on October 18, 2022, extending the deadline for Davis to file an amended complaint to November 18, 2022. (ECF No. 10). The Court also denied Davis’s application to proceed *in forma pauperis* for an inmate, and gave him until November 18, 2022, to either pay the full \$402 filing fee for a civil action or file a new fully complete IFP application for a non-inmate. (*Id.*)

1 Before the second deadline expired, Davis filed notices that he had been  
2 arrested on October 21, 2022, and updated his address with the Court to WCDF.  
3 (ECF Nos. 11, 12). It appeared that Davis could have missed delivery of the  
4 Court's October 18, 2022, order, so the Court again considered alternatives to  
5 dismissal and entered a third order on December 13, 2022, setting a final  
6 deadline for Davis to file an amended complaint and either pay the filing fee or  
7 file a new fully complete IFP application for an inmate. (ECF No. 14). The Court  
8 noted in its order that, according to the WCDF inmate database, Davis was still  
9 incarcerated at that facility. (*Id.* at 1).

10 The third deadline expired on January 13, 2023, but Davis has not filed an  
11 amended complaint and either paid the filing fee or filed a new IFP application.  
12 Rather, over a month after the Court entered its order extending the deadline a  
13 third time, Davis filed notice that his address had changed, and he was no longer  
14 incarcerated. (ECF No. 15). Davis also filed two motions asking the Court to send  
15 him free copies of all documents in this action. (ECF Nos. 16, 18). And Davis filed  
16 a notice that his address had changed again. (ECF No. 17).

## 17 **I. DISCUSSION**

18 District courts have the inherent power to control their dockets and “[i]n  
19 the exercise of that power, they may impose sanctions including, where  
20 appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los*  
21 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
22 on a party's failure to obey a court order or comply with local rules. *See Carey v.*  
23 *King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to  
24 comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
25 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
26 (dismissal for failure to comply with court order). In determining whether to  
27 dismiss an action on one of these grounds, the Court must consider: (1) the  
28 public's interest in expeditious resolution of litigation; (2) the Court's need to

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
2 favoring disposition of cases on their merits; and (5) the availability of less drastic  
3 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
4 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

5 The first two factors, the public's interest in expeditiously resolving this  
6 litigation and the Court's interest in managing its docket, weigh in favor of  
7 dismissal of Davis's claims. Although the Court is sympathetic to the several  
8 changes Davis had with his incarceration status and housing, this action has  
9 been delayed for four months waiting for Davis to file an amended complaint. The  
10 Court finds that further delay of this action would be unreasonable. Thus the  
11 third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
12 because a presumption of injury arises from the occurrence of unreasonable  
13 delay in filing a pleading ordered by the court or prosecuting an action. *See*  
14 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the  
15 public policy favoring disposition of cases on their merits—is greatly outweighed  
16 by the factors favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic  
18 alternatives can be used to correct the party's failure that brought about the  
19 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
20 992 (9th Cir. 1999); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
21 Cir. 2002). Courts "need not exhaust every sanction short of dismissal before  
22 finally dismissing a case, but must explore possible and meaningful alternatives."  
23 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action  
24 cannot realistically proceed until Davis files an amended complaint and either  
25 pays the filing fee or properly applies for IFP status, the only alternative is to enter  
26 a fourth order setting a fourth deadline. But the reality of repeating an ignored  
27 order is that it often only delays the inevitable and squanders the Court's finite  
28 resources.

1 The circumstances here do not indicate that this case will be an exception.  
2 Davis recently updated his address with the Court and asks for free copies of the  
3 documents filed in this action, but there is no evidence that Davis did not receive  
4 the Court's December 13, 2022, order setting the third deadline. Moreover, Davis  
5 has not shown the good cause and excusable neglect necessary for the Court to  
6 reopen and extend the deadline. Setting a fourth deadline is not a meaningful  
7 alternative given these circumstances. So the fifth factor favors dismissal.

## 8 **II. CONCLUSION**

9 Having thoroughly considered these dismissal factors, the Court finds that  
10 they weigh in favor of dismissal. It is therefore ordered that this action is  
11 dismissed without prejudice based on Plaintiff Hasan Davis's failure to file an  
12 amended complaint and either pay the filing fee or file a new application to  
13 proceed *in forma pauperis* in compliance with this Court's orders dated  
14 September 13, 2022, October 18, 2022, and December 13, 2022, and for failure  
15 to state a claim. The Clerk of Court is directed to enter judgment accordingly and  
16 close this case. No other documents may be filed in this now-closed case. If Davis  
17 wishes to pursue his claims, he must file a complaint in a new case.

18 It is further ordered that Davis's motions for various relief (ECF Nos. 13,  
19 16, 18) are denied as moot.

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22 DATED THIS 22<sup>nd</sup> day of February 2023.

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25  
26 ANNE R. TRAUM  
27 UNITED STATES DISTRICT JUDGE  
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